

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SACRAMENTO COUNTY OFFICE OF  
EDUCATION AND SACRAMENTO CITY  
UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2012120710

ORDER DENYING MOTION TO ADD  
THE SACRAMENTO COUNTY SELPA  
AS A PARTY

On December 17, 2012, Student filed a request for a due process hearing (complaint)<sup>1</sup> naming the Sacramento County Office of Education (SCOE), the Sacramento City Unified School District (SCUSD), and the California Department of Education (CDE). She also sought a stay put order requiring SCOE to continue funding her current residential placement until this matter is resolved.

On January 3, 2013, the Office of Administrative Hearings (OAH) issued a stay put order requiring SCOE to continue funding Student's placement while this proceeding is pending, and on January 23, 2013, OAH dismissed CDE as a party.

On February 28, 2013, SCUSD moved to add the Sacramento County Special Education Local Plan Area (SELPA) as a party to the matter. Neither Student nor SCOE filed a responsive pleading.

APPLICABLE LAW

In considering joinder of a party, OAH applies by analogy the requirements of the Code of Civil Procedure. Under that Code, a "necessary" party may be joined upon motion of any party. Section 389, subdivision (a) of the Code of Civil Procedure defines a "necessary" party as follows:

A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (1) in his absence complete relief cannot be accorded among those already parties or (2) he claims an interest relating to

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<sup>1</sup> A request for a due process hearing under Education Code section 56502 is the due process complaint notice required under Title 20 United States Code section 1415(b)(7)(A).

the subject of the action and is so situated that the disposition of the action in his absence may (i) as a practical matter impair or impede his ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest. If he has not been so joined, the court shall order that he be made a party.

A public education agency involved in any decisions regarding a student may be involved in a due process hearing. (Ed. Code, § 56501, subd. (a).) A public education agency is defined as any public agency, including a charter school, responsible for providing special education or related services. (Ed. Code, §§ 56500, 56028.5.)

## DISCUSSION

The complaint in this matter alleges that Student is a 16-year-old ward of the Sacramento County Juvenile Court and is currently placed in an out-of-state residential treatment facility in Devereux Florida. It further alleges that in 2010 the Sacramento County Juvenile Court ordered SCOE to fund Student's residential placement, but that order was reversed by the Third District Court of Appeal in November 2012. SCOE then notified Student that, beginning on January 1, 2013, it would no longer fund her placement. Student seeks an order determining which agency is responsible for providing her special education. Later pleadings reveal that both SCOE and SCUSD deny financial responsibility for Student's placement.

SCUSD alleges in its moving papers that it is the sole district member of the SELPA, and that SCOE is the SELPA's administrative unit. SCUSD argues that if it is found SCOE placed Student in Devereux Florida, then under Education Code 56325, subdivision (c) the SELPA, not the District or SCOE, will be responsible for supporting the placement<sup>2</sup>. SCUSD reasons that the SELPA is thus a necessary party because complete relief cannot be afforded among the parties without the SELPA's presence in the litigation.

SCUSD's argument is unpersuasive. If OAH were to order either SCUSD or SCOE to continue funding Student's placement, that entity could seek reimbursement from the SELPA, either by agreement or by using available state remedies for reimbursement between agencies. SCUSD cites no authority in support of the proposition that it is OAH's job to sort out financial responsibility among a district, its single-district SELPA, and the SELPA's administrative agency.

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<sup>2</sup> SCUSD's theory is that when the Juvenile Court appointed a new surrogate or responsible parent for Student who resides within the District, that constituted a transfer into the District within the meaning of Education Code section 56325, subdivisions (a) and (c), and that therefore the SELPA rather than SCUSD is responsible for Student's education for at least the rest of the school year.

SCUSD's motion is also untimely. It is based on the allegations of the complaint, which was filed on December 17, 2012. SCUSD first articulated its legal theory under Evidence Code section 56325 in a pleading filed December 19, 2012, relating to a stay put motion. SCUSD does not explain why it waited until February 28, 2013, to attempt to join another party to the action whose alleged liability is premised on that same theory. This matter is scheduled for prehearing conference (PHC) on March 11, 2013, and the due process hearing is set to begin on March 20, 2013. The current parties have all filed prehearing conference statements. Addition of a new party at this late stage of the litigation would necessitate a lengthy continuance so that the new party could be served, could exercise its right to file a Notice of Insufficiency or other appropriate pretrial motion, could participate in a resolution session and mediation, and could prepare to meet the charges against it, file a PHC statement and participate in a PHC.

The relief SCUSD seeks also would effectively amend Student's complaint. Although Student does not oppose addition of the SELPA as a party, she has not agreed to amend her complaint, which would require that the timeline for the entire action be reset. (20 U.S.C. § 1415(c)(2)(E)(ii).) The pending complaint contains no charging allegations against the SELPA.<sup>3</sup>

#### ORDER

1. The motion to add the Sacramento County SELPA as a party is denied.
2. All previously scheduled dates are confirmed.

Dated: March 8, 2013

/s/

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CHARLES MARSON  
Administrative Law Judge  
Office of Administrative Hearings

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<sup>3</sup> Nothing in this order prevents Student from amending her complaint to include the SELPA and thus ensure that all possible responsible parties are before this tribunal.